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SERVICE DATE – OCTOBER 15, 2014

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. FD 35855

#### SOUTHWESTERN RAILROAD, INC.—LEASE AND OPERATION EXEMPTION—BNSF RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:<sup>1</sup> This decision allows Southwestern Railroad, Inc., a Class III rail carrier, to continue to lease from BNSF Railway Company and operate approximately 227.6 miles of rail line in New Mexico without giving employees the full 60-day advance notice of the transaction because no employees would be adversely affected.

Decided: October 14, 2014

On September 15, 2014, Southwestern Railroad, Inc. (SW) filed a request for a waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e). The waiver request is related to a verified notice of exemption concurrently filed by SW in this docket under 49 C.F.R. § 1150.41 to continue to lease and operate rail lines in New Mexico, in which SW certified that its projected annual revenues as a result of this transaction would exceed \$5 million. Accordingly, at least 60 days before the concurrently filed notice of exemption can become effective, SW is required to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. No opposition to this waiver request has been filed.

### BACKGROUND

SW filed its verified notice of exemption<sup>2</sup> to continue to lease from BNSF Railway Company (BNSF) and operate approximately 227.6 miles of rail line in New Mexico, as follows:

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Notice of the exemption was served and published in the Federal Register on October 1, 2014 (79 Fed. Reg. 59,361). But for the labor notice requirements, the exemption would become effective 30 days from its filing date, October 15, 2014.

(1) on the Carlsbad Subdivision between milepost 0.5 at Clovis and milepost 183.0 at Carlsbad, (2) in the Carlsbad Yard,<sup>3</sup> (3) on the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 near Carlsbad, and (4) on the Loving Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 at Loving.<sup>4</sup> The verified notice of exemption was filed because SW and BNSF had recently entered into a Third Amendment to their 2004 Lease Agreement that would extend the term of the 2004 lease to December 31, 2023.

Because SW has been leasing and operating the line and will continue to do so, SW requests a waiver so that the authority it seeks in its exemption notice can become effective without SW's providing the full 60-day advance notice. In support, SW asserts that: (1) no BNSF employees would be affected because no BNSF employee has performed operations or maintenance on the line since 2004; and (2) no SW employees would be affected because SW would continue to provide the same service and maintenance on the line as it has been providing since the inception of the lease.

#### DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. SW employees would continue to provide the same service and maintenance they have provided since 2004, and BNSF employees have performed no work on the line since then. Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, thereby allowing the related exemption authority to lease and operate the line to become effective on October 15, 2014.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>3</sup> SW states that there are no milepost designations associated with the 5.1-mile line of railroad located in the Carlsbad Yard.

<sup>4</sup> SW was granted authority to lease and operate the rail line in Southwestern Railroad—Lease & Operation Exemption—Burlington Northern & Santa Fe Railway, FD 34533 (STB served Oct. 22, 2004).

It is ordered:

1. SW's request for waiver is granted, and the exemption authority to lease and operate the line is effective on October 15, 2014.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.